

Message Text

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NESCO

E.O. 11652:N/A

TAGS: UNESCO, SHUR, PORG, OCON

SUBJECT:UNESCO: PROPOSED DUE PROCESS MACHINERY FOR
EXAMINING COMPLAINTS OF MEMBER STATES AGAINST EACH OTHER

REF: PARIS 19936

1. DISCUSSION OF THIS INITIATIVE MUST START BY DISTINGUISH-
ING IT FROM THE PARALLEL ACTION TO INCREASE UNESCO'S
EFFECTIVENESS IN THE AREA OF HUMAN RIGHTS. WHEREAS MANY
CRITICISMS THAT MAY BE BROUGHT BY ONE UNESCO MEMBER STATE
AGAINST ANOTHER MAY BE CLASSIFIABLE AS HUMAN RIGHTS ISSUES,
THERE ARE OTHER ISSUES WITHIN UNESCO'S COMPETENCE ON WHICH
CRITICISM COULD BE BASED THAT ARE EITHER CLEARLY NOT HUMAN
RIGHTS ISSUES, THERE ARE OTHER ISSUES WITHIN UNESCO'S
COMPETENCE ON WHICH CRITICISM COULD BE BASED THAT ARE
EITHER CLEARLY NOT HUMAN RIGHTS IN NATURE, OR WHOSE HUMAN
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RIGHTS CHARACTER IS SUBJECT TO HONEST DISAGREEMENT. OUR
DUE PROCESS INITIATIVE IS INTENDED TO PROVIDE MACHINERY
THAT WOULD BE USED FOR HANDLING ALL COMPLAINTS BETWEEN
MEMBER STATES, INCLUDING THOSE BASED ON HUMAN RIGHTS. THIS
MACHINERY, THEREFORE, IS CONTEMPLATED FOR USE ONLY REGARD-
ING QUESTIONS, NOT THOSE REGARDING CASES.

2. OUR TACTICAL OBJECTIVES AT THE 103RD EXECUTIVE BOARD
WILL INCLUDE THE FOLLOWING:

A- KEEP "DUE PROCESS" DISTINGUISHABLE FROM, BUT COMPATIBLE
WITH, THE ACTION ON HUMAN RIGHTS.

B. LIMIT OUR ACTION TO THE PRINCIPLES INVOLVED, AND LEAVE
AS MANY OF THE DETAILS AS POSSIBLE TO SUBSEQUENT STUDY AND
NEGOTIATION.

C. GET THE EXECUTIVE BOARD TO AUTHORIZE A STUDY OF DUE
PROCESS MACHINERY AND PRESENT RECOMMENDATIONS TO THE 104TH
SESSION. THE STUDY COULD BE DONE BY THE SECRETARIAT, BY
A WORKING GROUP OF PERM DELS, OR JOINTLY.

3. WE REALIZE THAT THE GOVERNMENTS THAT WANT TO USE UNESCO
FOR POLITICAL ATTACKS WILL OPPOSE OUR INITIATIVE, THE VERY
OBJECT OF WHICH IS TO REDUCE POLITICAL ATTACK. OUR HOPE
IS THAT THE GOVERNMENTS THAT HAVE A SERIOUS COMMITMENT TO
MAINTAINING UNESCO AS A MECHANISM FOR CARRYING OUT THE
ACTIVITIES MANDATED IN ITS CONSTITUTION WILL SEE OUR
INITIATIVE AS AN IMPORTANT MEANS OF ENHANCING THESE ACTIVI-
TIES, AND WILL SUPPORT US.

4. ESSENTIAL ELEMENTS OF THE DUE PROCESS MACHINERY THAT WE
HAVE IN MIND ARE:

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A. MAXIMUM USE OF INDEPENDENT, IMPARTIAL, HIGHLY QUALIFIED
EXPERTS TO EXAMINE ALLEGATIONS FOR SUBSTANCE.

B. EXPERTS WOULD WORK IN SEPARATE SESSIONS THAT ARE NOT
CONNECTED WITH THE EXECUTIVE BOARD OR THE GENERAL CONFER-
ENCE.

C. THE EXPERTS WOULD HAVE THE AUTHORITY TO REQUEST THE
PARTIES TO A DISPUTE TO SUBMIT STATEMENTS.

D. THE FINDINGS OF THE EXPERTS WOULD GO TO AN APPROPRIATE
POLITICAL BODY, EITHER GENERAL CONFERENCE OR EXECUTIVE
BOARD, FOR A DECISION ON THE ACTION TO BE TAKEN.

E. WHEN THE EXPERTS HAVE COMPLETED THEIR EXAMINATION OF AN
ALLEGATION, THEN THE FINDINGS SHOULD BE MADE PUBLIC.
PUBLICITY IS THE SINE QUA NON OF EFFECTIVE ACTION BY AN
INTERNATIONAL ORGANIZATION IN BRINGING ABOUT COMPLIANCE
WITH ITS INTERNATIONAL INSTRUMENTS. UNESCO, WE AGREE, IS
NOT A TRIBUNAL, IT CANNOT IMPOSE FINES, IT CANNOT DECREE
PUNISHMENT. THE ONLY EFFECTIVE ACTION IT CAN TAKE IS TO
MAKE PUBLIC THE FINDINGS OF A BODY OF RESPECTED EXPERTS

AFTER THOSE FINDINGS HAVE BEEN REVIEWED BY A REPRESENTATIVE POLITICAL BODY. THE ILO EXPERIENCE WITH SIMILAR MACHINERY HAS ESTABLISHED CLEARLY THAT PUBLICITY IS TAKEN SERIOUSLY BY MEMBER STATES.

5. WHAT WE WANT THE 103RD SESSION TO DO IS AGREE TO EXAMINE THE APPLICATION OF THESE PRINCIPLES TO UNESCO. WE DO NOT WISH TO BE ANY MORE PRECISE IN DESCRIBING THE MACHINERY THAN WE WANT AT THIS TIME. WE PREFER TO TALK ABOUT THE TWO PRINCIPLES--USE OF INDEPENDENT EXPERTS AND USE OF PUBLICITY FOR SUBSTANTIATED ALLEGATIONS--AND NOT GO INTO A DETAILED DESCRIPTION OF THE PROPOSED MACHINERY. IF WE CAN GET ACCEPTANCE OF THE PRINCIPLES, THEN WE CAN NEGOTIATE THE DETAILS. AT THE PRESENT, WE WANT TO LEAVE AS MUCH ROOM AS POSSIBLE FOR CONSTRUCTIVE SUGGESTIONS LIMITED OFFICIAL USE

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FROM THOSE GOVERNMENTS THAT SUPPORT US, AS WELL AS TO TAKE INTO ACCOUNT THE WISHES OF THE DIRECTOR GENERAL.

6. AT 103RD EXECUTIVE BOARD, WE PROPOSE TO ASK THE BOARD TO AGREE THAT A DUE PROCESS MECHANISM INVOLVING THE PRINCIPLES DESCRIBED IN PARA 4 ABOVE BE STUDIED, AND THAT SPECIFIC PROPOSALS BE MADE TO THE 104TH SESSION. WE WOULD APPRECIATE PERM DEL'S VIEWS ON THE TIMING, PARTICULARLY REGARDING THE FEASIBILITY OF MOVING SPECIFIC PROPOSALS ONTO THE AGENDA OF THE 20TH GENERAL CONFERENCE, IF, AS SEEMS POSSIBLE, THE EXECUTIVE BOARD DECIDES THAT GENERAL CONFERENCE APPROVAL IS REQUIRED FOR ESTABLISHMENT OF DUE PROCESS MACHINERY.

7. PARALLELING OUR DUE PROCESS INITIATIVE, WE WILL WORK TO GET THE SAME PRINCIPLES INCORPORATED INTO ANY ACTION THAT IS TAKEN TO IMPROVE MACHINERY FOR THE IMPLEMENTATION OF UNESCO'S HUMAN RIGHTS RESPONSIBILITIES. VANCE

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